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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,438	03/26/2004	Ryan J. Kleckner	08008.00634	1475
24382	7590	12/02/2005	EXAMINER LE, TAN	
JOSEPH S. HEINO, ESQ. DAVIS & KUELTHAU, S.C. 111 E. KILBOURN SUITE 1400 MILWAUKEE, WI 53202-6613			ART UNIT 3632	
DATE MAILED: 12/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/811,438	KLECKNER, RYAN J.	
	Examiner	Art Unit	
	Tan Le	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the first office action for serial number 10/811,438 filed on 3/26/04. This application contains 38 claims numbered 1-38.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 3/26/04. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 is incomplete because it omits the necessary structural cooperative relationships between elements of device.

Claim 23 is incomplete for the same reasons expressed for claim 1.

With respect to claim 2, it is unclear as to what constitutes "tube-like" or "trough-like". Note that "tubes" or "troughs" come in all sizes and shapes, and by definition, a "tube" is merely a cylindrical structure or device as a hollow elongated cylinder, and "trough" is merely a long shallow often V-shaped receptacle, conduit or channel. These

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two elements don't appear to be of elements alternative. Accordingly, how does this terminology structurally define the respective element?

Claims 6-7 are also incomplete because it omits the necessary functional language or structural cooperative relationships between the track and the other previously recited elements. Without functional language and structural relationship between the elements, the claim is merely a catalog of elements.

Claims 25-26 are also incomplete for the same reasons expressed in claims 6-7.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

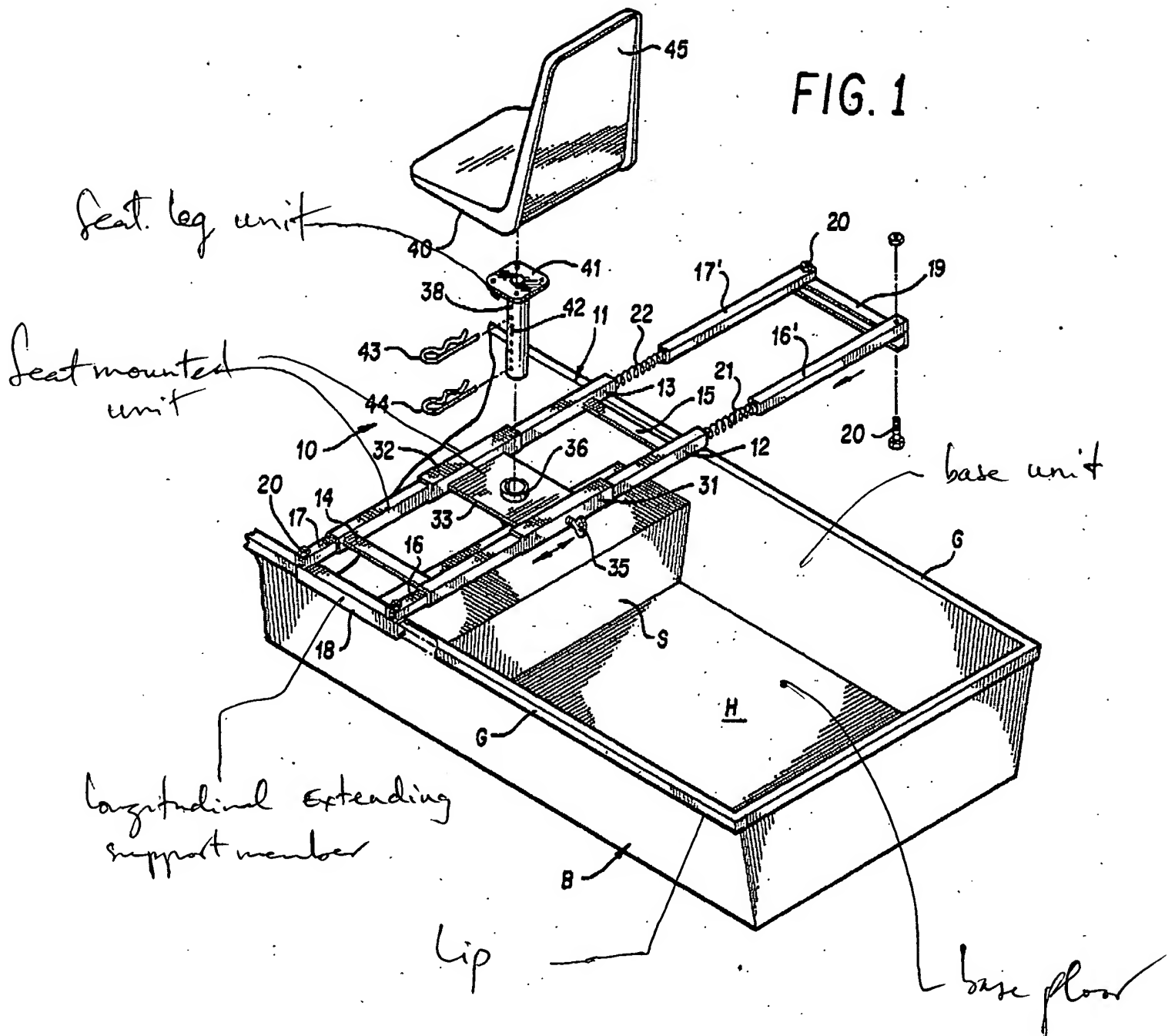
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by US

Patent No. 4,766,838 to Johnson.

Claims 1-5 reads on Johnson as illustrated on Fig. 1 below:



Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-24 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of US Patent no. 4,357,894 to Kirk.

Johnson teaches substantially as claimed as illustrated above except for a plurality of seat mounts and seat legs for securing to a plurality of seats in variable locations within the base for a plurality of riders.

Kirk teaches a plurality of seat mounts, seat legs or seats securing to a plurality of seat mounts and legs.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a plurality of seats in the boat as in Kirk so as to allow more of riders or persons to seat in the boat or to maximum occupants seats if so desired.

It should be noted that claims 36-38 recites languages such as "single piece of molded material" or "integrally formed" is a product- by -process claim. Referring the seat mount or seat leg or both such as "single piece molded" is not accorded patentable weight in the product-by-process claim. It is well settled that the patentability of a product does not depend on its method of production. Product -by-process claims are not construed as being limited to the product formed by the specific process recited. In

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re Hirao et al., 535 F2d 67, 190 USPQ 15. Furthermore, a "single piece" or "one-piece" or "integrally formed" is not patentable over the references since the seat mounts or seat legs of Johnson in view of Kirk can be interpreted as one piece if they are rigidly secured or connected together. Although they are not structurally integral, but they are rigidly secured and hence are integral or one-piece in functional sense. In re Clark (CCPA 102 USPQ 241. The term "integral" is also necessarily restricted to one-piece article. In re Kohno (CCPA 157 USPQ 275. The term "integral or one-piece or single piece" may be construed as relatively broad. In re Dike (CCPA 157 USPQ 581.

Allowable Subject Matter

5. Claims 8-22 and 27-34 are rejected but would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

3,795,927 to Darwin et al.

6,189,478 to Myers et al.

4,649,852 to Piantedosi

3,718,365 to Gibson

3,821,825 to Bailey

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US2004/0245817 to Kleckner

The above patents disclose various types of boat seats relevant to the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818.


The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
November 21, 2005.



ANITA KING
PRIMARY EXAMINER